Report of a Judicial Inquiry Regarding His Honour Senior Judge Gordon R. Stewart A Judge of the Provincial Court (Criminal Division) Ontario

The Honourable
Mr. Justice David H. W. Henry
Commissioner

1987

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His Honour Senior Judge
Gordon R. Stewart

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Son Honneur le juge principal
Gordon R. Stewart

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TO HIS HONOUR THE LIEUTENANT
GOVERNOR OF THE PROVINCE OF ONTARIO

May It Please Your Honour:

Pursuant to my appointment by Order in Council No. O.C. 3048/85 as amended by No. O.C. 772/86 to make an inquiry and report to the Lieutenant Governor in Council into the circumstances respecting the allegations contained in complaints specified in Order in Council No. O.C. 3048/85 with respect to His Honour Senior Judge Gordon R. Stewart, a Judge of the Provincial Court (Criminal Division), and to report whether he is disabled from the due execution of his office by reason of his conduct, I hereby submit my Report.

...

Commissioner

16 March 1987

Ontario
Executive Council

Order in Council

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that

WHEREAS by Order-in-Council numbered O.C.3048/85, the Honourable John David Cromarty, one of Her Majesty's Justices of the Supreme Court of Ontario, was appointed to make an inquiry and report thereon;

AND WHEREAS the Honourable John David Cromarty has advised that by reason of ill health he cannot continue to conduct the inquiry;

NOW THEREFORE, pursuant to subsection 60(1) of the Courts of Justice Act, 1984, S.O. 1984, c. 11 the Honourable D.H.W. Henry, one of Her Majesty's Justices of the Supreme Court of Ontario, be substituted for the Honourable John David Cromarty in paragraphs (i) and (ii) at page 7 of Order-in-Council 3048/85.

Certified to be a true copy
Deputy Clerk, Executive Council

Recommended _____
Attorney General

Concurred _____
Chairman

Approved and Ordered March 21, 1986
Date

_____
Lieutenant Governor

O.C.772/86

Ontario
Executive Council

Order in Council

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that

WHEREAS pursuant to the provisions of subsections 58(1) and 59(1) of the Courts of Justice Act, 1984, c. 11, the Judicial Council for Provincial Judges proceeded to investigate the following matters raised in letters of complaint concerning His Honour Senior Judge Gordon R. Stewart, a Judge of the Provincial Court (Criminal Division):

(1) that His Honour Senior Judge Gordon R. Stewart, as part of a dispute with officials of the City of Windsor and the City of Windsor Police Force relating to the validity and enforcement of the City of Windsor parking by-law Number 6683:

(a) on or about February 14, 1985, purported to instruct a City of Windsor police cadet to issue parking tickets to certain police vehicles parked outside police headquarters;

(b) on or about February 21, 1985, directed a Justice of the Peace who had been presiding in Provincial Offences Court to step down, assumed the bench and, in open court, threatened to hold the police prosecutor and any officers laying charges under the said by-law in contempt of court;

(c) on that same occasion, indicated that representatives of the City of Windsor would be charged with fraud, for extracting fines under an unlawful by-law;

(d) on or about March 1, 1985, granted an interview to a reporter from The Windsor Star during which Judge Stewart described his treatment by the city police relating to the said by-law as harassment and described the by-law in intemperate and inappropriate language;

(e) on or about March 5, 1985, at City Hall Square in Windsor, indicated to a Windsor police officer that he would "make it hard" on the police department as a result of the officer having parked in a "no parking" zone, and that the said officer would be summoned to court as a result of this parking infraction;

(f) on or about April 16, 1985, outside the Provincial Court House in Windsor, told another Windsor police officer that he would be summoned to court as a result of parking in a "no parking" zone and further told the officer that this was being done because of the trouble he was having with the Windsor Police Department;

(g) on or about April 18, 1985, at City Hall Square in Windsor, having parked his automobile

in a "no parking" zone, proceeded to take photographs of the various police cars parked in the Square;

(h) on that same date, refused to accept service of a parking summons from a Windsor police officer, and threatened to charge the officer under the Police Act with bias and to report him to the Police Commission. Judge Stewart further threatened to report both the officer and Chief of Police Hughes to Chief Judge Hayes, and further accused the officer of having committed contempt of court arising from the fact that the officer had acted as police prosecutor in prosecutions under the parking by-law;

(i) on or about May 23, 1985, directed a Justice of the Peace then sitting in Provincial Offences Court to step down so that he could assume the bench in order to deal with all parking offences on the docket. Knowing that he himself was a defendant on a parking charge scheduled to be dealt with that morning, Judge Stewart instructed the Clerk of the Court that all matters were to be put over for two weeks, and that in certain circumstances, the charges were to be dismissed;

(j) shortly after May 23, 1985, attempted to obtain the original tape of the court proceedings held on May 23, 1985, so that the record of those proceedings would not be available for public scrutiny;

(k) on or about June 25, 1985, granted a 3 1/2 hour interview to a reporter with the CBC television affiliate in Windsor, portions of which were subsequently televised commencing on June 29, 1985. During the course of that interview, which related to his dispute regarding the parking by-law and the events described above, Judge Stewart permitted himself to be filmed in his Chambers, gowned;

(l) in portions of the said interview which were televised, stated that an article which appeared in The Windsor Star on May 29, 1985, titled "Judge's actions spark complaint" was libellous of him and had been reported to Chief Judge Hayes. As well, Judge Stewart accused the Provincial Court Co-ordinator, the local Crown Attorney and The Windsor Star as having engaged in conduct towards him which amounted to contempt of court; and

(m) on or about July 8, 1985, retained and instructed counsel to appear before City Council on his behalf to make representations as to the invalidity of parking by-law Number 6683;

(2) that His Honour Senior Judge Gordon R. Stewart, as part of a dispute with the City of Windsor Police Force relating to the use by the force of police

cadets to serve process under the Criminal Code and the Provincial Offences Act:

(a) on or about March 25, 1985, while sitting in court, instructed a police cadet that he was not capable of escorting a convicted person to the court office in order to pay a fine;

(b) on or about March 27, 1985, while sitting in remand court, repeatedly instructed the Crown Attorney that police cadets were not to be used to serve process;

(c) on or about April 15, 1985, while sitting in court, stated that the court would refuse to recognize service by a cadet as being in compliance with the Criminal Code;

(d) on or about May 23, 1985, having directed the Justice of the Peace to step down so that he could assume the bench, stated that in any case in which process had been served by a police cadet, the charge was to be dismissed; and

(e) on or about June 27, 1985, while sitting in court, stated that in his view the police department was ignoring the law by allowing cadets to serve process and that he would "get tough" with the police for so doing;

AND WHEREAS after considering all the evidence heard by it on December 3 and 4, 1985 and the submissions of counsel, the Judicial Council have concluded that the facts set forth in sub-paragraphs 1(a), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (m) of paragraph 1 set out above, and in sub-paragraphs (a) to (e), inclusive, of paragraph 2 set out above have been established, except that the Judicial Council have made no finding as to the following matters:

(1) That the Justice of the Peace then sitting in Provincial Offences Court was asked to step down so that he could assume the bench as alleged in sub-paragraph 1(i);

(2) That the purpose of attempting to obtain the original tape as alleged in sub-paragraph 1(j) was so that the proceedings would not be available for scrutiny;

(3) As to the length of the interview or the dates of the telecast in sub-paragraph 1(k); and

(4) That he directed the Justice of the Peace to step down so that he could assume the bench as alleged in sub-paragraph 2(d);

AND WHEREAS pursuant to subsection 59(7) of the Courts of Justice Act, 1984 the Judicial Council, as a result of its investigation, reported its opinion regarding the complaints to the Attorney General and recommended that an inquiry be held under section 60 of the Courts of Justice Act, 1984;

NOW THEREFORE,

(i) pursuant to the provisions of subsection 60(1) of the Courts of Justice Act, 1984, c. 11, the Honourable John David Cromarty, one of Her Majesty's Justices of the Supreme Court of Ontario, be appointed to make an inquiry and report thereon for the purposes of subsection 56(1) of the Courts of Justice Act, 1984 to the Lieutenant Governor in Council into the matters described above;

(ii) all government ministries, agencies, boards, and commissions assist the Honourable Mr. Justice John David Cromarty to the fullest extent in order that His Lordship may carry out his duties and functions; and

(iii) His Lordship have authority to engage such counsel, investigators and other staff as His Lordship deems proper at rates of remuneration and reimbursement to be approved by the Management Board of Cabinet.

Recommended _____ Concurred _____
Attorney General Chairman

Approved and Ordered December 19, 1985 _____
Date Lieutenant Governor

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I. AUTHORITY, SCOPE AND OBJECTIVE OF THE INQUIRY

(a) The Courts of Justice Act, 1984

This inquiry was instituted pursuant to Part IV of the Courts of Justice Act, 1984, S.O. 1984, c.11. For convenience, the relevant provisions of Part IV of the Act are set out in Appendix C in order to show the scheme of the legislation pertaining to the appointment, tenure, promotion, jurisdiction and removal from office of provincial judges; the organization of the Provincial Courts; the role of the Judicial Council for Provincial Judges concerning complaints; and other matters that assist in understanding the general role of the Provincial Courts and their judges at the present time. Not all these provisions were in place when Senior Judge Stewart was appointed, but the Courts of Justice Act, 1984 applied to him when it was proclaimed in force on January 1, 1985. It was a comprehensive revision of the legislation establishing the Ontario courts and regulating their proceedings, which replaced the former Judicature Act, R.S.O. 1980, c.223, as well as a number of other statutory provisions.

By the Constitution Acts, 1867 to 1982, the administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and the

civil procedure in those courts, are matters assigned to the Provincial Legislatures. The judges of the Superior, District and County Courts are appointed by the Governor General of Canada; their tenure and remuneration are also prescribed by the Constitution Acts, 1867 to 1982, and legislation of the Parliament of Canada.

Judges of the Provincial Courts established by Part IV of the Courts of Justice Act, 1984 are, however, appointed by the Lieutenant Governor in Council of Ontario, and their tenure is prescribed by that Act.

A provincial judge may be removed from office in accordance with s.56 of the Courts of Justice Act, 1984, which provides:

> 56 (1) A provincial judge may be removed from office before attaining retirement age only if,
>
> (a) a complaint regarding the judge has been made to the Judicial Council; and
>
> (b) the removal is recommended by an inquiry held under section 60 on the ground that the judge has become incapacitated or disabled from the due execution of his or her office by reason of,
>
> (i) infirmity,
>
> (ii) conduct that is incompatible with the execution of his or her office, or

(iii) having failed to perform the duties of his or her office.

(2) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Legislative Assembly.

Complaints against a provincial judge are made to the Judicial Council for Provincial Judges and are investigated pursuant to ss.57-59 of the Act (Appendix C) and the Judicial Council may report its opinion to the Attorney General and may recommend an inquiry under s.60.

The present inquiry is constituted by order of the Lieutenant Governor in Council made December 19, 1985, as amended, (p.iii above) which recites that the Judicial Council has considered complaints against Senior Judge Stewart, and has recommended an inquiry under s.60 of the Act into certain of those complaints.

Section 60 provides:

60 (1) The Lieutenant Governor in Council may appoint a judge of the Supreme Court to inquire into the question whether a provincial judge should be removed from office.

(2) The Public Inquiries Act applies to an inquiry under subsection (1).

(3) The report of the inquiry may recommend,

(a) that the judge be removed from office;

(b) that the judge be compensated for all or part of the costs incurred by the judge relating to the inquiry.

(4) The report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days of the commencement of the next ensuing session.

(b) Scope of the Inquiry

Order in Council 3048/85 specifies the allegations of conduct that this Commission is to inquire into. For ease of reference the following complaints are the subject matter of the inquiry as set out in the Notice published in the Windsor Star for April 4, 1986 by direction of the Commission:

A. That His Honour Senior Judge Gordon R. Stewart, as part of a dispute with officials of the City of Windsor and the City of Windsor Police Force relating to the validity and enforcement of the City of Windsor parking by-law Number 6683:

1. On or about February 14, 1985, purported to instruct a City of Windsor police cadet to issue parking tickets to certain police vehicles parked outside police headquarters;

2. On or about March 1, 1985, granted an interview to a reporter from The Windsor Star during which Judge Stewart described his treatment by the city police relating to the said by-law as harassment and described the by-law in intemperate and inappropriate language;

3. On or about March 5, 1985, at City Hall Square in Windsor, indicated to a Windsor police officer that he would "make it hard" on the police department as a result of the officer having parked in a "no parking" zone, and that the said officer would be summoned to court as a result of this parking infraction;

4. On or about April 16, 1985, outside the Provincial Court House in Windsor, told another Windsor police officer that he would be summoned to court as a result of parking in a "no parking" zone and further told the officer that this was being done because of the trouble he was having with the Windsor Police Department;

5. On or about April 18, 1985, at City Hall Square in Windsor, having parked his automobile in a "no parking" zone, proceeded to take photographs of the various police cars parked in the Square;

6. On that same date, refused to accept service of a parking summons from a Windsor police officer, and threatened to charge the officer under the Police Act with bias and to report him to the Police Commission. Judge Stewart further threatened to report both the officer and Chief of Police Hughes to Chief Judge Hayes, and further accused the officer of having committed contempt of court arising from the fact that the officer had acted as police prosecutor in prosecutions under the parking by-law;

7. On or about May 23, 1985, knowing that he himself was a defendant on a parking charge scheduled to be dealt with that morning, Judge Stewart instructed the Clerk of the Court that all matters were to be put over for two weeks, and that in certain circumstances, the charges were to be dismissed.

8. Shortly after May 23, 1985, attempted to obtain the original tape of the court proceedings held on May 23, 1985.

9. On or about June 25, 1985, granted an interview to a reporter with the CBC television affiliate in Windsor, portions of which were subsequently televised. During the course of that interview, which related to his dispute regarding the parking by-law and the events described above, Judge Stewart permitted himself to be filmed in his Chambers, gowned;

10. In portions of the said interview which were televised, stated that an article which appeared in The Windsor Star on May 29, 1985, titled "Judge's actions spark complaint" was libellous of him and had been reported to Chief Judge Hayes. As well, Judge Stewart accused the Provincial Court Co-ordinator, the local Crown Attorney and The Windsor Star as having engaged in conduct towards him which amounted to contempt of court; and

11. On or about July 8, 1985, retained and instructed counsel to appear before City Council on his behalf to make representations as to the invalidity of parking by-law Number 6683.

B. That His Honour Senior Judge Gordon R. Stewart, as part of a dispute with the City of Windsor Police Force relating to the use by the force of police cadets to serve process under the Criminal Code and the Provincial Offences Act:

1. On or about March 25, 1985, while sitting in court, instructed a police cadet that he was not capable of escorting a convicted person to the court office in order to pay a fine.

2. On or about March 27, 1985, while sitting in remand court, repeatedly instructed the Crown Attorney that police cadets were not to be used to serve process;

3. On or about April 15, 1985, while sitting in court, stated that the court would refuse to recognize service by a cadet as being in compliance with the Criminal Code;

4. On or about May 23, 1985, stated that in any case in which process had been served by a police cadet, the charge was to be dismissed; and

5. On or about June 27, 1985, while sitting in court, stated that in his view the police department was ignoring the law by allowing cadets to serve process and that he would "get tough" with the police for so doing.

(c) **Objective of the Inquiry**

The objective as specified in s-s.60(1) of the Courts of Justice Act, 1984 is "to inquire into the question whether a provincial judge should be removed from office".

It is important to recognize that the alleged conduct of Senior Judge Stewart that is the subject matter of this inquiry is not in the nature of criminal conduct, corruption or moral turpitude; rather the conduct alleged falls into the category of impropriety, indiscretion, lack of judgment and lack of impartiality. The task of the Commission is first to find whether the allegations are supported by formal evidence, second to determine whether

any conduct proved to have taken place was unbecoming a judge, and third whether that conduct, in all the circumstances including the public interest, warrants removal of the judge from office. To recommend the judge's removal from office the Commission would have to conclude, as the statute says, that he has become incapacitated or disabled from the due exercise of his office by reason of conduct that is incompatible with the execution of his office as a judge.

In discharging its functions the Commission is required to have in mind, as a bench-mark in assessing any proved behaviour of the judge, the standards of conduct required of a judge. In Ontario there is no written code of conduct for judges; the standard however has been variously expressed over time in judicial pronouncements, and the following will serve to define in general terms the standard of conduct that is universally accepted as required of a judge:

> Fundamental to the ideal of justice, and no less so because it is so often repeated, is the principle that justice should not only be done but manifestly be seen to be done. And, because a judge's role is so intimate a part of the process of justice that his misbehaviour must inevitably reflect upon it, it is equally fundamental that a judge's conduct should be free from impropriety and the appearance of impropriety. That general principle is basic to all aspects of judicial behaviour - not only to a judge's behaviour in the performance of the duties of his office but also to his behaviour in his personal life.

A judge's responsibility as a judge does not begin or end at the courtroom door. His behaviour off the bench is not wholly outside his position as a judge and may fall within the realm of legitimate public concern. If he engages in irresponsible or improper conduct - conduct which causes others fairly to question his character, his honour, his integrity, his morals, his sense of decency - he loses respect, not only for himself as a person, but for the court over which he presides and the judicial process. Such conduct, even though in private life, may be at variance with his obligations as a judge and may affect his ability to discharge fully and completely his duties on the bench. Public knowledge of improper conduct by a judge can only erode public confidence in him as a judge and in the administration of justice.

The confidence of the public in the administration of justice is of paramount importance. That confidence is vital to our democratic system of government. And public confidence in the judiciary - in its integrity, its impartiality, its independence, its moral authority - is indispensable to the administration of justice. In the ultimate analysis the authority of our courts rests on public acceptance of judicial decisions - and that acceptance in turn depends on public confidence in our judges.

Every judge in his judicial and non-judicial activity has a responsibility to preserve and enhance public confidence in the administration of justice. He serves as an exemplar of justice, to much of the public its personification, and confidence in our system of justice in large measure depends on him. When he engages in misconduct, the magnitude of the misconduct may be measured by the extent to which he has impaired the confidence of the public in himself as a judge and in the administration of justice.

[Commission of Inquiry re Provincial Judge Harry J. Williams (1978), pp.17-18]

The Honourable I.C. Rand, a former judge of the Supreme Court of Canada, stated the underlying principles, in part, as follows:

> He (the judge) is sworn to the administration of Justice as our evolving ethical intelligence has fashioned it; but that obligation is not limited to the adjudicative role. He comes under another but equally sensitive duty, to respect the Law which he administers and to promote its processes to their proper ends.
>
> ...
>
> When the function of the judge is fully sensed, to hear, weigh, and, according to Law, to decide justly, to do so in a manner which fair-minded persons acting normally, expressing in fact enlightened public opinion, would approve, determining unfitness in a judge, at least in the statement of principle, does not perhaps present as much difficulty as might be imagined. That principle would seem to be this: would the conduct, fairly determined in the light of all circumstances, lead such persons to attribute such a defect of moral character that the discharge of the duties of the office thereafter would be suspect?; has it destroyed unquestioning confidence of uprightness, or moral integrity, of honesty in decision, the elements of public honour?
>
> [See Commission of Inquiry re The Honourable Leo A. Landreville (1966), pp.95, 97]

For reasons that I shall state, the Commission has been unable to carry forward the inquiry in the normal manner to its conclusion. It has therefore formed no opinion as to the truth of the allegations, or as to the fundamental question posed by s.60 in relation to Senior Judge Stewart.

II. PROCEEDINGS OF THE COMMISSION

The Commission held two hearings, the first on April 14, 1986 and the second on December 9, 1986. Both were held in public in the City of Windsor.

(a) The Hearing on April 14, 1986

Public notice of this hearing was given by publication in the Windsor Star for April 4, 1986. The notice set out the subject matter of the inquiry in the terms that I have shown earlier. Members of the public who wished to give evidence, or who had information they believed would be of interest to the inquiry, were requested to communicate with counsel for the Commission. The public were informed that the public hearing for the taking of evidence would commence on April 14, 1986 in Windsor at the time and place described.

The Commission convened accordingly on that day as announced. Some members of the public and a considerable number of representatives of the press were present. I permitted television crews and photographers an opportunity to take pictures and video recordings before the commencement of the hearing; the media fully cooperated in not operating cameras during the actual proceedings at my

request; otherwise representatives of the media were present throughout both hearings.

Senior Judge Stewart was not personally present but was represented by counsel, Mr. David I. McWilliams. Counsel for the Commission present were, Mr. John W. Brown, and Mrs. Kathryn N. Feldman. A preliminary application was made by Mr. Harvey T. Strosberg for standing on behalf of Mrs. Anna McIntyre, the widow and executrix of the estate of Brian McIntyre who died on August 3, 1985; Mr. McIntyre was, as the Commission was told, the local Crown Attorney whom Judge Stewart was said to have accused of having engaged in conduct towards the judge which amounted to contempt of court (see para.A.10 of the notice set out above). After hearing all counsel and no one objecting, I concluded that the late Brian McIntyre and his executrix had a substantial and direct interest in the subject matter of the inquiry; I therefore granted standing to his executrix, Mrs. McIntyre, as of right pursuant to s.5 of the Public Inquiries Act, R.S.O. 1980, c.411, for the limited purpose of dealing with that portion of the allegations which relates to the judge's conduct towards Mr. McIntyre.

Correspondence in the form of a letter dated April 5, 1986 from a member of the public, Mr. Edward Halas, to the Commission supporting Senior Judge Stewart was entered as an exhibit (exhibit 3). This and other documents admitted as exhibits are listed in Appendix B.

I also invited any members of the public who were present and who wished to have standing or to testify to come forward but no one responded.

Mr. McWilliams then applied on behalf of Senior Judge Stewart for an adjournment sine die (i.e., without a date fixed) on the ground that Judge Stewart was then in hospital and that his condition of health was such that he could neither instruct counsel nor take part in the proceedings.

In support of his application he tendered medical reports from three medical practitioners which were received and entered as exhibits 7 to 11 (see Appendix B). They are as follows:

Dr. A.P. Denys - October 17, 1985
Dr. Richard W. Johnson - January 30, 1986
Dr. Walter Yaworsky - January 30, 1986
Dr. A.P. Denys - March 19, 1986
Dr. Walter Yaworsky - April 2, 1986

These medical reports amply demonstrated to me that Senior Judge Stewart was then not able for reasons of physical and mental health to undergo the rigours of the inquiry, to conduct his case competently or to instruct his counsel.

Mr. McWilliams also filed as exhibit 6 a letter dated April 1, 1986 from Senior Judge Stewart to the Lieutenant Governor of Ontario as follows:

> This is to inform you that, as of this date, I will be going on sick leave and that, with such sick leave and other benefits, I will be retiring and ceasing to hold office on 30 November, 1986, my statutory retirement date.
>
> Letters of medical opinion from Dr. R.W. Johnson, Dr. Walter Yaworsky and Dr. A.P. Denys are enclosed.
>
> On 5 March 1986, my solicitor, David I. McWilliams, informed Mr. Glenn Carter, Assistant Deputy Attorney General, of my then intention of going on sick leave and retiring in the expectation that this would avoid the projected inquiry beginning on 14 April 1986.
>
> He also informed Mr. Carter of my intention of asking for an indefinite adjournment at the opening of the projected inquiry on 14 April 1986 on the grounds of my inability, through illness, to take part in such an inquiry.
>
> A copy of this letter is going forward to the Chief Judge, Mr. Carter and to Mr. John W. Brown, counsel to the Commission.

The Commission was thus faced at the outset of the inquiry with the following matters requiring resolution:

(a) The uncontradicted opinion evidence that Senior Judge Stewart was for reasons of health unable to undergo the inquiry or instruct counsel and this for the foreseeable future.

(b) A strong submission by Mr. McWilliams that the medical information should be treated as confidential.

(c) The judge's statement to the Lieutenant Governor of Ontario in his letter of April 1, 1986 that he intended to go on sick leave and would retire and cease to hold office on November 30, 1986; it was apparent that if this occurred, there would be no further purpose to be served by the inquiry, the object of the statute being to determine if he should be removed from office.

Lest there be any misunderstanding, I add that Senior Judge Stewart was no longer performing judicial duties, having been suspended from performance of those duties by Chief Judge F.C. Hayes by letter of December 23, 1985 until further notice. That letter, which was later introduced as exhibit 21, contains the following:

I wish to confirm the notice which was given to you on Wednesday, December 4, 1985, as follows:

1. It is with regret that in view of the decision of the Judicial Council, which was communicated to you on Wednesday, December 4, 1985, as of that date you are not assigned to preside as a Provincial Judge at the sittings of the Provincial Court (Criminal Division) until further notice from me.

2. In addition, you were further advised on that date that you shall not carry out any further duties as Senior Judge for the area for which you are designated as Senior Judge, until further notice from me.

I disposed of the points which required decision, as follows, on April 14, 1986 in my ruling which I set out verbatim:

THE COMMISSIONER: Gentlemen, I have decided after much thought that the whole of the medical reports should be in the public domain, and it goes without saying there will be an adjournment as asked, but I find that I am unable to accede to the request by Mr. McWilliams that the medical reports or portions of them be kept in confidence.

My reasons are as follows: Senior Judge Stewart, through his counsel - he, not through his counsel, he being not present as he is in the hospital, asks that the Commission adjourn this hearing sine die on the grounds of health.

It is common ground that Judge Stewart will cease to hold office at the end of November, 1986. His letter to the Lieutenant Governor in Council, Exhibit 6, says in the opening paragraph:

> This is to inform you that as of this date (April 1, 1986) I will be going on sick leave and that with such sick leave and other benefits I will be retiring and ceasing to hold office on the 30th of November, 1986, my statutory retirement date.

That is the context in which this application is made.

If this occurs it will effectively terminate the Inquiry into his conduct because the purpose of the Inquiry under Section 60 of the Courts of Justice Act is to recommend whether or not he should be removed from office.

Mr. McWilliams offers medical opinions from three doctors in support of an indefinite adjournment. Those opinions are the medical report by Dr. A.P. Denys, dated October 17, 1985, Exhibit 7, medical report of Dr. Richard W. Johnson, dated January 30, 1986, Exhibit 8, and the medical report of Dr. Walter Yaworsky, dated January 30, 1986, Exhibit 9, the medical report of Dr. Denys, dated March 19, 1986 and the medical report of Dr. Yaworsky dated April 2, 1986.

There is no question that in the light of these opinions that to subject Senior Judge Stewart to the rigours of an Inquiry at the present would be both unjust to him and inhumane.

The opinion of Drs. Johnson and Denys are concerned primarily with his physical condition. Of greater importance in the context is the opinion of Dr. Yaworsky as to his psychological and emotional condition, which Dr. Yaworsky sums up at page 4 of his opinion as follows (Exhibit 9) and I will just quote a short passage:

> In my opinion this man would be incapable of functioning at work at the present time. The continued sustained stress, especially over the last three years, has turned him

almost into a debilitated person, and that with the symptoms as described, could well lead to impairment of judgment.

I would recommend that any hearing that he has to face beyond the one that he has completed in December, 1985, be deferred. Based on his clinical condition as I saw him on January 29, 1986, I do not feel that he would have the full emotional capacity or the complete cognitive functioning to adequately assist in his own defence or give his lawyer full instruction. It would be my opinion further that as his delivery in the office was frequently disjointed and often not fully comprehensible, that there would be a period of time of active treatment that would be required.

Dr. Yaworsky concluded his opinion by saying that he would report in about six to 12 months' time after he had a course of therapy to see what his response and prognosis will be.

It is clear to me at least that in his opinion of April 2, 1986 that Dr. Yaworsky who then indicates that he has admitted him to the hospital where he expects him to be an in-patient from two to four weeks has not altered the prognosis that I have mentioned.

No counsel has asked to have the doctors produced for cross-examination, nor has there been any other challenge to these medical opinions.

The combined effect of the opinions and the prognosis of Dr. Yaworsky particularly, persuaded me that Senior Judge Stewart is unlikely to be able to withstand an inquiry before the date of his statutory retirement arrives.

I have to assume that that would be the case, and that by the end of November of this year Senior Judge Stewart will still be incapacitated in the sense reported.

The issue now to be decided seeing that I am going to grant the adjournment requested, is whether in giving full effect to the medical opinions the Commission should make their contents public.

Section 4 of the Public Inquiries Act provides as follows:

> All hearings on an Inquiry are open to the public except where the Commission conducting the Inquiry is of the opinion that, ...

and skipping (a)

> (b) Intimate financial or personal matters or other matters may be disclosed at the hearing that are of such a nature that, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,
>
> in which case the Commission may hold the hearing concerning any such matters in camera.

Thus the statute sets the fundamental principle that hearings be held in public; confidentiality is the exception depending upon the view taken by the court in the circumstances.

Counsel for Senior Judge Stewart relies on the medical opinions which are found in Exhibits 7 to 11, and urges that the Commission view the privacy aspect of these reports as justifying their confidentiality; he offers the suggestion that some portions of the medical report of Dr. Yaworsky be edited out as being unnecessary to the final opinion.

I must say that I find nothing extraneous in this report or in any of the reports, which in the case of Dr. Yaworsky's is full and detailed, and I am reluctant to take that course proposed.

Mr. Strosberg, speaking from the point of view of his client, the Estate, submits that the public interest in the circumstances of this case outweighs the private interest of Judge Stewart in the confidentiality of the reports.

Mr. Brown as Commission Counsel has made clear the options open to the Commission based upon the Statute. All counsel agree I must balance the public interest in an open inquiry against the private interest of Judge Stewart in the protection of the confidentiality of his medical condition.

In his report of the Commission of Inquiry into the Confidentiality of Health Information, the Commissioner, Mr. Justice Krever, made the following observations which are helpful in the context at pages 6 and 7 of Volume 1:

> For the purposes of this report, I adopt one of Professor Westin's definitions of privacy in Privacy and Freedom. 'Privacy', he wrote, 'is the claim of individuals, groups or institutions to determine for themselves when, how and to what extent information about them is communicated to others.' That definition, of course, has a direct relationship with confidentiality of health records.

And further, this at page 7:

> As I have suggested, my starting point is a presumption that our society values privacy for health information, creating a need for the observance of, or respect for, confidentiality. To put it another way, other things being equal, we do not favour free and uninhibited disclosure of everyone's health information. As with all generalizations, there are exceptions as, for example, the public's interest in the

health of heads of state and political leaders. This is not to say, of course, that persons in that category would agree with the validity of the exception. We have recently seen the consequences of public disclosure of psychiatric counselling for a candidate for high public office in another nation. In any event, to the extent that there is any case to be made for these exceptions, they are just that - exceptions and not the rule. That conclusion is derived from the need we all have for privacy and the highly personal nature of the information that forms my subject matter.

I have decided that the medical opinions in Exhibits 7 to 11 ought to be in the public domain so far as this Inquiry is concerned.

What is here involved is a very unusual situation. The Lieutenant Governor has ordered the Inquiry under the Statute. It is beyond doubt that Senior Judge Stewart is at present unable to undergo it physically and emotionally.

The prognosis is such that I must assume that before he is fit to undergo the hearings he will have taken his statutory retirement. That being so, the Inquiry would have no further purpose.

This course may well be misunderstood by the public. There has been publicity and local concern about his alleged conduct, and the public are aware of the terms of the Order-in-Council which orders the Inquiry.

It is my opinion after full reflection on the submissions of all counsel, that nothing in the reasons for the adjournment sought which leads to this result ought to be withheld from the public.

The public interest requires that the facts and the opinions disclosed be available in full with the attendant embarrassment to Senior Judge Stewart.

> It is regrettable that Judge Stewart must suffer, as his Counsel says he will, humiliation for this, but he is one of Her Majesty's judges and a public figure; it is a matter of overriding concern that the reasons for such a lengthy adjournment with its attendant consequences should be fully disclosed to the public.
>
> The medical reports in Exhibits 7 to 11 will therefore be left as part of the public record in their entirety.
>
> I propose that there be a periodic review of Senior Judge Stewart's condition by the doctors in case it becomes possible to resume the Inquiry before November 30 next.
>
> I will ask Counsel to speak to that, and also to the question whether the adjournment should be sine die or to a fixed date.
>
> That ends my reasons.

In the result I adjourned the inquiry sine die (without a date fixed) and ordered the medical reports to be updated and filed with the Commission on or about May 31, July 31, September 30 and November 15, 1986. The inquiry therefore stood adjourned to be brought on again upon thirty days notice to the public, to be published in the press and delivered to all counsel.

In the meantime any person inquiring from the press and the public was informed that the transcript of the day's proceedings and the exhibits, including the medical reports, were available for inspection at the offices of the Commission in Toronto.

(b) The Hearing on December 9, 1987

Periodic medical reports were received by the Commission during the summer of 1986 as directed, from which it was apparent that Judge Stewart's health was continuing as before. Having in mind his statement of intention made on April 1 to the Lieutenant Governor of Ontario that he would retire on November 30, the Commission caused notice that it would reconvene on December 9, 1986 to be published in the Windsor Star of November 7, 1986 "for the purpose of determining whether any further proceedings are warranted".

Senior Judge Stewart was not personally present but was represented by counsel, Mr. Frank Montello. Other counsel were present as before, except Mr. McWilliams who had ceased to act.

The updated medical reports were entered on the public record as exhibits 13 to 18. The most recent report of Dr. Yaworsky, dated November 14, 1986, included the following assessment of Senior Judge Stewart:

> In my opinion this man is still clinically ill. He suffers from a major depressive disorder with features of emotional lability and agitation. He shows an obsessional personality structure. He continues to attend AA meetings which are of support to him.

> In my opinion he does not fulfil at this time the criteria in determining competency in terms of fitness to stand trial. I refer to the fact that the defendant should have the ability to also 'Trust and communicate relevantly with his counsel, maintain a collaborative relationship with his lawyer and help plan legal strategy, follow testimony for contradictions or errors, testify relevantly and be cross-examined if necessary, tolerate stress at the trial and while awaiting trial'. In my opinion his clinical condition is such that he would be unable to fulfil this standard. In my opinion, he could well require a further 6 or 12 months of continued treatment to bring him to that position. I would consider him disabled for employment from a psychiatric standpoint.

Also entered was further correspondence from the same member of the public, Mr. Edward Halas, to the Commission which is supportive of Judge Stewart (exhibit 20).

The Commission was presented with a letter from Chief Judge Hayes of the Provincial Court addressed to Senior Judge Stewart, dated December 23, 1985, indicating the action taken by him, to which I have already referred (exhibit 21).

The Commission was apprised of an application made to the Judicial Council by Senior Judge Stewart pursuant to s.54(5) of the Courts of Justice Act, 1984, for approval of his continuation in office beyond the age of 70

years (see Appendix C). The chairman of the Judicial Council, the Chief Justice of Ontario, by letter dated November 21, 1986, informed Mr. Montello of the decision of the Judicial Council as follows (exhibit 22):

> I am writing to advise you that pursuant to section 54(5) of the Courts of Justice Act, S.O. 1984, c.11, the Judicial Council has not approved the application of His Honour Senior Judge Gordon R. Stewart of the Provincial Court (Criminal Division) to continue in office as a judge beyond the age of 70 years, which he will attain on November 30, 1986.
>
> At a meeting held on November 19, 1986, the Judicial Council passed the following resolution:
>
> > In light of the medical evidence before this Council that His Honour Senior Judge Gordon R. Stewart is unable to perform his judicial duties, this Council does not recommend that he continue in office after he attains the age of 70 years.
>
> In view of Senior Judge Stewart's medical condition, I have not written to him directly to inform him of the Judicial Council's decision. I will be very grateful if you will advise him of the decision.

Finally, the Commission received and entered the following letter, dated December 1, 1986, from Glenn H. Carter, Assistant Deputy Attorney General of Ontario, Courts Administration Division, addressed to counsel for the Commission, as follows (exhibit 19):

> I am writing to advise that, as of December 1, 1986, Senior Judge Gordon R. Stewart has retired from office, having reached the retirement age provided for in subsection 54(2) of the Courts of Justice Act, 1984.

After hearing the submissions of counsel I accordingly terminated the proceedings except for the disposition of submissions made as to costs and the preparation and delivery of the Commission's report.

III. SENIOR JUDGE STEWART'S BACKGROUND AND CHARACTER

Considerable publicity has been given to the allegations against Senior Judge Stewart in the community where he resides and has served as a judge for some 22 years. If this inquiry had followed its normal course, Judge Stewart would have had an opportunity to respond to the allegations, to face his accusers so to speak, and to state his side of the case before the Commission; the Commission would then have assessed the evidence and would have determined whether any conduct by him that was proved, was such as to be adjudged incompatible with the office of the judge, or alternatively not meriting censure.

As it is, the Commission is unable to make that assessment; yet the allegations remain a matter of public record. Experience tells us that in the circumstances some

members of the public are likely to take the unproven allegations at face value and to view them as reflecting adversely upon the character of Judge Stewart and the integrity of the judiciary as a whole.

I deem it appropriate therefore, in fairness to Judge Stewart and the judicial system as a whole, to draw attention to what was said on the record with respect to Judge Stewart's background and his record as a judge.

Mr. Montello, as counsel for Senior Judge Stewart, made the following statement at the hearing on December 9, 1986:

> ...
>
> Mr. Commissioner, it is my firm belief that had the medical evidence that has been presented to you been available to the Judicial Council this inquiry probably would not even have been called for.
>
> Now I want to make it perfectly clear I am not criticizing anybody. I don't think it was available at the time of the hearing before the Judicial Council, and I am certainly in no way attempting to criticize the position taken by counsel at that time.
>
> It is that very illness that you alluded to in the granting of the adjournment when Mr. McWilliams was counsel that really prevents him from being here today to answer the allegations that had been made against him.

However, sir, I think that I should say to you that there is not a single allegation against Judge Stewart impugning his character by suggesting any criminal or moral wrongdoing while he served this community as a Judge for 22 years, and as a Senior Judge for this County and the County of Kent for the past 22 [sic] years.

I have read those allegations, and I suggest to you that they are really allegations that bad judgment may have influenced some of his decisions in dealing with the parking by-law, the Provincial Offences court, comments made to the press and T.V. about other law enforcement officers, his opinion with respect to the utilization of police cadets in the courts, in the service of process.

I think it is interesting also to point out to you, sir, that it wasn't until after he was suspended that one of the matters relating to a ruling made by a Justice of the Peace on the by-law was ever appealed.

I can remember, sir, in the past 30 years that I have practised, that have taken me into courts of all levels, that there were times when judges and/or Crowns and/or defence counsel and/or witnesses used intemperate and maybe inappropriate language in expressing themselves on certain issues, and I suggest to you those judges were and are today still abiding by their oaths of office and they are still good judges.

I am not attempting to give you, sir, what would have been presented to you by way of a defence to each of these allegations. However, I'm trying to characterize them as allegations of imprudent judgment calls as opposed to any misconduct by Judge Stewart in terms of criminal or moral allegations made against him.

Mr. Commissioner, I feel that this may be the last time that anyone can express himself on behalf of the Judge, and I think it is important, sir, to have this community become aware once again, be reminded that Judge Stewart when he was known simply as Gordon Stewart left the Chrysler Corporation after having laboured in their Treasury Division for approximately four years to in effect return to school to go to law school.

After attending law school and returning to Windsor in 1948 he formed a partnership with the late Norman L. Spencer in this community, who represented this community as a Member of Parliament.

After that, in 1951 he joined with Walter McGregor, Q.C. and David McWilliams, Q.C. for the partnership that lasted really until his appointment to the Bench.

I can remember times in the past where I was defence counsel and he was what I might suggest to you a fearless federal prosecutor in crimes involving counterfeit money and narcotics of various descriptions.

He was also a Special Assistant to our Crown Attorney at that time, appointed by the Attorney General to deal with certain high profile cases involving indictable offences that had to be tried before a judge and jury.

He was also from time to time retained by the U.S. Department of Justice on extradition proceedings dealing primarily again with the importation of drugs, counterfeit money and other illegal contraband such as offensive weapons.

During his career as a lawyer he was extensively engaged in labour relations, negotiations, conciliations, and even after his appointment to the Bench he was sought out by both management and labour as a sole arbitrator in many of the important labour problems that existed in this community at that time.

Prior to his appointment in 1965 as a Provincial Court Judge he had been appointed to the Windsor Police Commission. He continued to serve on the Windsor Police Commission, particularly being a representative for the enlarged Commission at that time of the community such as Riverside, the Town of Riverside which was in effect annexed to the City at that time.

After his appointment to the Bench in 1965, in 1969 he was made Senior Judge of the Counties of Kent and Essex.

To give you some of his family - and incidentally one of the items that I had almost overlooked, as a practising lawyer he also became a good politician, and after serving two years as a councillor in the old Town of Riverside, he then became its Mayor for the next eight ensuing years, which terminated with his appointment to the Bench.

Mr. Commissioner, in terms of his home life, and this is while he was going to law school, he married his wife Barbara who was a registered nurse. He has a daughter Marianne who graduated from the University of Windsor and Duke University with a Masters Degree in Political Science, and this past September she obtained her PhD Degree and is a professor now in Political Science on the staff at Rutgers University in, I believe it is New Brunswick, [sic] New Jersey.

The second daughter, Joan, graduated from the University of Windsor, Bachelor of Social Science, and is presently working with the Essex County Children's Aid Society. She incidentally a couple of years ago made him a grandfather by the birth of a son, Michel Stewart.

Mr. Commissioner, one of the letters that I gave to Mr. Brown was the letter of Judge Hayes suspending Judge Stewart's activities as both a judge and senior judge for this area, and it may be, sir, that because of the passing of his statutory retirement age that this Commission may not have anything to do other than to really compile its final report as my friend indicated.

However, I suggest to you that the illness that has prevented him from in effect being here has also prevented him from being judged as he would have judged with firmness, fairness and compassion.

Mr. Strosberg, counsel for the executrix of the estate of Brian McIntyre, said the following:

I don't believe there is any doubt that Judge Stewart served the community as a politician, as counsel, arbitrator and a judge, faithfully and with distinction for many years.

The conduct which gave rise to this Inquiry was aberrant and bizarre and out of character for him.

The Commission was appointed because there was, amongst other things, a public concern and the community saw [sic] an explanation for this aberrant and bizarre conduct. The explanation has been forthcoming.

He is a sick man, and the comments and actions which gave rise to this Inquiry were those of a sick man. In my submission the community is satisfied with the explanation. Not only as a matter of law do I agree that one cannot be removed from an office or a position one no longer holds, but as a matter of commonsense and practicality even if one could, one need not proceed further with an inquiry into these events.

The explanation of illness has been put fully before the community and has been handled tastefully and fully by the media, and the explanation of illness ensures that the reputation of Mr. McIntyre and his memory is not sullied by any unfounded allegations that his conduct while he was alive was in any way contemptuous.

> In my submission the process has served its function and served its function well, and I thank Your Lordship for your patience in dealing with it because it has been dealt with with great sensitivity on the part of all participants in my submission.

No contrary view was expressed before the Commission. Indeed, everything indicates that Judge Stewart, when he was in good mental health, was a competent judge who performed the duties of his office in a diligent and able manner.

IV. CONCLUSION

Having since the conclusion of the hearings made a full review of the proceedings, including the transcripts, the documents entered as exhibits, and the submissions of all counsel, I have reached the following conclusions:

(a) Senior Judge Stewart was suspended from his duties by the Chief Judge of the Provincial Court on December 4, 1985. He ceased to hold office as a judge on November 30, 1986 by operation of law. As the object of this inquiry by s.60 of the Courts of Justice Act, 1984, is to determine whether the judge should be removed from office, there can be no further purpose to continuing the inquiry.

(b) I am satisfied that by reason of Senior Judge Stewart's state of health at the outset of these proceedings and continuing to November 30, 1986 when he ceased to hold office, it would have been contrary to principle and inhumane to subject him to the proceedings that would ordinarily ensue if the inquiry were pursued. This I find to be no fault of Senior Judge Stewart.

(c) I should hope that the proceedings that have already been taken in public and the publication of this report will be viewed by the concerned public as putting in proper perspective any conduct of his that gave rise to complaint; and that such conduct may be viewed as out of character and attributable to illness.

V. COSTS

Counsel for Senior Judge Stewart asks me to recommend that he be compensated for his costs incurred relating to the inquiry, as I have authority to do under s.60 of the Courts of Justice Act, 1984. However, in view of all the circumstances I make no recommendation as to costs of Judge Stewart or any other party.

The inquiry is therefore concluded. The transcripts of the proceedings and the exhibits remain a matter of public record and may be inspected at the Archives of Ontario.

All of which is respectfully submitted.

Commissioner

Osgoode Hall
Toronto
March, 1987

Appendix A

Staff of Commission

John W. Brown Kathryn N. Feldman	Commission Counsel
Inspector James Neish	Commission Investigator
Inge Sardi	Commission Secretary
Nicky Huq Susan Vella	Commission Clerks
Carol Cruickshank	Secretary

Appearances

David I. McWilliams Frank Montello	Counsel for Senior Judge Gordon R. Stewart
Harvey T. Strosberg	Counsel for the Executrix of the Estate of the late Brian McIntyre

Hearings

Public hearings were held in the Holiday Inn, 480 Riverside Drive, Windsor, Ontario in The Trianon C Meeting Room on April 14, 1986, and in the Campaign Room on December 9, 1986.

Appendix B

List of Exhibits

	No.
Copy of Orders in Council, dated March 21, 1986 and December 19, 1985.	1.
Tearsheet from the Windsor Star, April 4, 1986.	2.
Copy of letter from Edward Halas dated April 5, 1986.	3.
Copy of letter from Harvey Strosberg dated April 9, 1986.	4.
Copy of article in the Windsor Star.	5.
Copy of letter dated April 1, 1986.	6.
Medical report dated October 17, 1985.	7.
Medical report dated January 30, 1986.	8.
Medical report dated January 30, 1986.	9.
Medical report dated March 19, 1986.	10.
Medical report dated April 2, 1986.	11.
Tearsheet from the Windsor Star, November 7, 1986.	12.
Medical report of Dr. Walter Yaworsky dated May 23, 1986.	13.
Medical report of Dr. A.P. Denys dated May 28, 1986.	14.
Report of Dr. Walter Yaworsky dated June 17, 1986.	15.
Report of Dr. Walter Yaworsky dated August 25, 1986.	16.

List of Exhibits (continued)

	No.
Report of Dr. A.P. Denys dated September 25, 1986.	17.
Medical report of Dr. Walter Yaworsky dated November 14, 1986.	18.
Letter from Glenn H. Carter dated December 1, 1986.	19.
Two letters from Edward Halas dated November 8 and 17, 1986.	20.
Letter from Chief Judge S.C. Hayes to His Honour Senior Judge G.R. Stewart dated December 23, 1985.	21.
Letter from Chief Justice W.G.C. Howland to Frank Montello dated November 21, 1986.	22.

PROVINCIAL COURTS

JUDGES

Appointment of judges

52.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such provincial judges as are considered necessary. R.S.O. 1980, c. 398, s. 2.

Qualifications

(2) No person shall be appointed as a provincial judge unless he or she has been a member of the bar of one of the provinces of Canada for at least ten years. *New.*

Other employment

53.—(1) A provincial judge shall devote his or her whole time to the performance of his or her duties as a judge, except as authorized by the Lieutenant Governor in Council.

Idem

(2) Notwithstanding subsection (1), a provincial judge who, before the coming into force of this Part, had the consent of the Attorney General to act as an arbitrator or conciliator may continue to so act. R.S.O. 1980, c. 398, s. 12.

Retirement

54.—(1) Every provincial judge shall retire upon attaining the age of sixty-five years.

Idem

(2) Notwithstanding subsection (1), a provincial judge appointed as a full-time magistrate, judge of a juvenile and family court or master after the 1st day of July, 1941 and before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years.

Idem

(3) Notwithstanding subsection (1), a provincial judge appointed as a full-time magistrate on or before the 1st day of July, 1941 shall retire upon attaining the age of seventy-five years. R.S.O. 1980, c. 398, s. 5 (1-3).

Continuation of judges in office

(4) A judge who has attained the age for retirement under subsection (1) may, subject to the annual approval of the Chief Judge, continue in office as a full-time or part-time judge until he or she attains the age of seventy years, and a judge who has attained the age of seventy years may, subject to the annual approval of the Judicial Council, continue in office as a full-time or part-time judge until he or she has attained the age of seventy-five years.

Continuation of associate chief judge and senior judges in office

(5) An associate chief judge or senior judge who is in office upon attaining the age for retirement under subsection (1) may, subject to the annual approval of the Chief Judge, continue in that office until he or she has attained the age of seventy years and an associate chief judge or senior judge who has attained the age of seventy years may, subject to the annual approval of the Judicial Council, continue in that office until he or she has attained the age of seventy-five years.

(6) A chief judge who is in office upon attaining the age for retirement under subsection (1) or (2) may, subject to the annual approval of the Judicial Council, continue in that office until he or she has attained the age of seventy-five years. R.S.O. 1980, c. 398, s. 5 (4, 5, 6); 1983, c. 18, s. 1. Continuation of chief judge in office

55. A provincial judge may at any time resign from his or her office in writing, signed by the judge and delivered to the Lieutenant Governor. R.S.O. 1980, c. 398, s. 6. Resignation

56.—(1) A provincial judge may be removed from office before attaining retirement age only if, Removal for cause

(a) a complaint regarding the judge has been made to the Judicial Council; and

(b) the removal is recommended by an inquiry held under section 60 on the ground that the judge has become incapacitated or disabled from the due execution of his or her office by reason of,

(i) infirmity,

(ii) conduct that is incompatible with the execution of his or her office, or

(iii) having failed to perform the duties of his or her office. R.S.O. 1980, c. 398, s. 4 (1).

(2) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Legislative Assembly. R.S.O. 1980, c. 398, s. 4 (3). Order for removal

57.—(1) The Judicial Council for Provincial Judges is continued and shall be composed of, Judicial Council

(a) the Chief Justice of Ontario, who shall preside over the Judicial Council;

(b) the Chief Justice of the High Court;

(c) the Chief Judge of the District Court;

(d) the Chief Judge of the Provincial Court (Criminal Division);

(e) the Chief Judge of the Provincial Court (Family Division);

(f) the Chief Judge of the Provincial Court (Civil Division);

(g) the Treasurer of The Law Society of Upper Canada; and

(h) not more than two other persons appointed by the Lieutenant Governor in Council. R.S.O. 1980, c. 398, s. 7 (1).

Senior Master

(2) Where the Judicial Council is considering any matter relating to a master, the Senior Master is entitled to be present and participate as a member of the Council. *New.*

Quorum

(3) A majority of members of the Judicial Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Judicial Council.

Staff

R.S.O. 1980, c. 418

(4) Such officers and employees of the Judicial Council as are considered necessary may be appointed under the *Public Service Act.* R.S.O. 1980, c. 398, s. 7 (2, 3).

Expert assistance

(5) The Judicial Council may engage persons, including counsel, to assist it in its investigations. *New.*

Functions

58.—(1) The functions of the Judicial Council are,

(a) to consider all proposed appointments of provincial judges and make a report thereon to the Attorney General;

(b) to receive and investigate complaints against provincial judges. R.S.O. 1980, c. 398, s. 8 (1).

Liability for damages

(2) No action or other proceeding for damages shall be instituted against the Judicial Council or any member or officer thereof or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his or her duty. R.S.O. 1980, c. 398, s. 8 (6).

Investigation of complaints

59.—(1) Where the Judicial Council receives a complaint against a provincial judge, it shall take such action to investigate the complaint as it considers advisable. R.S.O. 1980, c. 398, s. 8 (1) (c).

Referral to Chief Judges

(2) The Judicial Council may transmit such complaints as it considers appropriate to the Chief Judge of the Provincial Court (Criminal Division), the Chief Judge of the Provincial Court (Family Division), the Chief Judge of the Provincial Court (Civil Division) or the Senior Master, as it considers appropriate. R.S.O. 1980, c. 398, s. 8 (2).

(3) The proceedings of the Judicial Council shall not be public, but it may inform the Attorney General respecting matters that it has investigated and the Attorney General may make public the fact that an investigation has been undertaken. R.S.O. 1980, c. 398, s. 8 (4). Proceedings not public

(4) The Judicial Council may order that information or documents relating to its proceedings not be published or disclosed except as required by law. *New.* Prohibiting publication

(5) The Judicial Council has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that Act. R.S.O. 1980, c. 398, s. 8 (5). Powers R.S.O. 1980, c. 411

(6) Where the Judicial Council has dealt with a complaint regarding a provincial judge, it shall inform, Notice of disposition

(a) the person who made the complaint; and

(b) where the complaint was brought to the attention of the judge, the judge,

of its disposition of the complaint. *New.*

(7) The Judicial Council may report its opinion regarding the complaint to the Attorney General and may recommend, Report and recommendations

(a) that an inquiry be held under section 60;

(b) that the judge be compensated for all or part of the costs incurred by the judge relating to the investigation. R.S.O. 1980, c. 398, s. 8 (3).

(8) A copy of a report made under subsection (7) shall be given to the judge. Copy to judge

(9) The Judicial Council shall not make a report under subsection (7) unless the judge was notified of the investigation and given an opportunity to be heard and to produce evidence on his or her behalf. Right to be heard

(10) Where the Judicial Council makes a report to the Attorney General under subsection (7), the Attorney General may make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so. *New.* Publication of report

60.—(1) The Lieutenant Governor in Council may appoint a judge of the Supreme Court to inquire into the question whether a provincial judge should be removed from office. Inquiry

Powers

(2) The *Public Inquiries Act* applies to an inquiry under subsection (1). R.S.O. 1980, c. 398, s. 4 (2).

Report

(3) The report of the inquiry may recommend,

(a) that the judge be removed from office;

(b) that the judge be compensated for all or part of the costs incurred by the judge relating to the inquiry. *New*.

Tabling of report

(4) The report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days of the commencement of the next ensuing session. R.S.O. 1980, c. 398, s. 4 (3).

Jurisdiction of judges

61.—(1) Every provincial judge has jurisdiction throughout Ontario and,

(a) shall exercise all the powers and perform all the duties conferred or imposed on a provincial judge by or under any Act of the Legislature or of the Parliament of Canada;

(b) subject to subsection (2), may exercise all the powers and perform all the duties conferred or imposed on a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada. R.S.O. 1980, c. 398, s. 9 (1) (a, c).

Idem

R.S.C. 1970, c. C-34

(2) A provincial judge shall not exercise the jurisdiction conferred on a magistrate under Part XVI of the *Criminal Code* (Canada) unless,

(a) he or she has been a member of the bar of one of the provinces of Canada; or

(b) he or she has acted as a provincial judge for a period of five years,

and the judge is so designated by the Lieutenant Governor in Council. R.S.O. 1980, c. 398, s. 9 (3).

Idem

(3) Every provincial judge is a justice of the peace and commissioner for taking affidavits. R.S.O. 1980, c. 398, s. 9 (1) (d).

Where procedures not provided

62. Jurisdiction conferred on a provincial judge, justice of the peace or provincial court shall, in the absence of express provision for procedures therefor in any Act, regulation or rule, be exercised in any manner consistent with the due administration of justice. R.S.O. 1980, c. 398, s. 9 (2).

Chief Judges

63.—(1) The Lieutenant Governor in Council may appoint a provincial judge as Chief Judge of the Provincial Court (Criminal Division), a provincial judge as Chief Judge of the Provincial Court (Family Division) and a provincial judge as Chief Judge of the Provincial Court (Civil Division).

Chief Judge of Provincial Offences Court

(2) The Chief Judge of the Provincial Court (Criminal Division) is Chief Judge of the Provincial Offences Court. R.S.O. 1980, c. 398, s. 10 (1, 2).

Idem

(3) The Chief Judge of the Provincial Court (Family Division) is the Chief Judge of the Provincial Court (Family Division) sitting as the Provincial Offences Court.

Idem

(4) Subsection (2) does not apply to the Unified Family Court sitting as the Provincial Offences Court. 1983, c. 80, s. 2 (1).

Duties of Chief Judge

(5) Each Chief Judge has general supervision and direction over the sittings of his or her court and the assignment of the judicial duties of the court except that in counties and districts where the Provincial Court (Civil Division) is presided over by a judge of the District Court, the Chief Judge of the District Court and, subject to the authority of the Chief Judge, the senior judge of the District Court in that county or district has general supervision and direction over the sittings of the court and the assignment of the judicial duties of the court.

Associate Chief Judge

(6) The Lieutenant Governor in Council may appoint a provincial judge as Associate Chief Judge of the Provincial Court (Criminal Division) and a provincial judge as Associate Chief Judge of the Provincial Court (Family Division). R.S.O. 1980, c. 398, s. 10 (3, 4).

Absence of Chief Judge

(7) Where the Chief Judge is absent from Ontario or is for any reason unable to act, all the powers and duties of the Chief Judge shall be exercised and performed by the Associate Chief Judge or, where both are absent or unable to act, by a judge designated by the Chief Judge. *New.*

Senior judges

64.—(1) The Lieutenant Governor in Council may designate a provincial judge to be a senior judge of the Provincial Court (Criminal Division), Provincial Court (Family Division) or Provincial Court (Civil Division), for such area as is named in the designation. R.S.O. 1980, c. 398, s. 11.

Duties

(2) A senior judge shall, subject to the authority of the chief judge, direct and supervise the sittings and the assignment of the judicial duties of the court in the area. *New.*

Election to revert to office of judge

65. A chief judge, associate chief judge or senior judge who has,

(a) continued in one or more of those offices for at least five years; or

(b) continued in office after attaining the age for retirement,

may elect by notice to the Attorney General to cease to perform the duties of that office and to assume the office of a provincial judge only. *New.*

NOTE: Clause 61 (1) (b) and Subsection 61 (2) have been repealed by S.O. 1987, c. 1, s. 4.